

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6587 of 1987

with

SPECIAL CIVIL APPLICATION No 6112 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RANJIT L KELLIYA

versus

DIST. SUPDT. OF POLICE  
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Appearance:

MR JP PARMAR for Petitioners

MR DP JOSHI for Respondents  
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Coram : MR JUSTICE S.K. KESHOTE

Date of Decision : 17/10/1997

C.A.V. JUDGMENT

1. As in both these matters, identical issue has been raised, the same are being disposed of by this common order.

2. The petitioners are the Police Constables in

Junagadh and Panchmahals Districts. Prayer has been made by them for direction to the respondent to immediately fill up the vacancies of the Head Constables which are reserved for Matriculate/S.S.C. passed Constables on the basis of seniority-cum-merit and to promote all Constables who have passed S.S.C. or Matriculation examination on or before 6-8-1979.

3. The petitioners' case is that under the resolution of the Government dated 25/28th September, 1964, the promotion to the posts of Head Constables has been provided to the extent of 33% from the Constables who have passed S.S.C. or Matriculate examination. Under the notification dated 6-8-1979, the Government brought in different rules for promotion to the posts of Head Constables and what the Government has interpreted that by subsequent notification the earlier circular stood repealed, which is not correct.

4. The counsel for the petitioners submit that the matter in issue is squarely covered by the decision of this Court in Special Civil Application No.3502/80 and cognate matters decided on 17-4-1985. This Court has decided in the aforesaid special civil application that the resolution of the Government providing 33% reservation in promotion to be given to the Constables who have passed Matriculation or S.S.C. examination is still holds fit after the notification dated 6th August, 1979 has comes into force.

5. On the other hand, the counsel for the respondent-State contended that the decision of this Court aforesaid has been reversed by the Division Bench, and as such, the petitioners have no case whatsoever in their favour. It has next been contended that under the notification dated 6th August, 1979 the rules have been framed for promotion to the posts of Head Constables Gr. I and II in exercise of powers conferred by clause (b) of section 5 of the Bombay Police Act and as these are the statutory rules of recruitment, the earlier Government circular stands repealed and no benefits can be given to the petitioners in the matter of promotion.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The circular dated 25/28-9-1964 is only an administrative circular and notification dated 6th August, 1979 has been issued in exercise of powers as conferred by section 5 of the Bombay Police Act. So this notification is a statutory notification under which

recruitment rules have been framed for promotion to the posts of Head Constables. Under the rules as framed by the notification dated 6th August, 1979, no reservation has been provided to the Constables who are possessing the qualification of Matriculation or S.S.C.. Rule-2 of the notification dated 6th August, 1979 provides that the appointment to the posts of Head Constables Gr. I and II in the Gujarat Subordinate Service Class III in the Police Department is to be made in the case of Head Constables Gr. I by promotion of persons of proved merit and efficiency from amongst persons working in the cadre of Head Constable Gr. II in respective branches and in the case of Head Constables Gr. II it is provided that a person of proved merit and efficiency from amongst the persons working in the cadre of Police Constable in the respective branches. Under these rules, I do not find that any reservation has been given. Once the statutory rules have been framed for recruitment then whatever administrative resolutions are there stands repealed unless the same have been protected by the statutory rules.

8. The chance of promotion is not a service condition nor a legal or fundamental right. The appointments to the posts of Constables are regulated under the statutory provisions. These are not the contractual appointments. The State Government can amend the rules to make the provisions for promotion and care has to be taken that by these statutory rules no accrued or vested rights are being taken. As stated earlier, the mere chance of promotion is not a service condition. By this enactment, no vested or accrued rights have been taken away in this case. The petitioners have no vested or accrued right in their favour under the Government resolution aforesaid, and as such, the promotions are to be regulated as per the provisions framed under the notification dated 6th August, 1979.

9. Otherwise also, the case of the petitioners is only based on the decision of this Court given in special civil application No.3502/80 and cognate matters and that decision has not been accepted by the Division Bench as it is clear from the decision dated 30th July, 1991 given by the Division Bench of this Court in L.P.A. No.187/86 and cognate matters.

10. These writ petitions are wholly misconceived and the same are dismissed with costs which are quantified to Rs.2000/- in each petition. The respondent-District Superintendent of Police concerned is directed to recover this amount of costs in reasonable monthly installments from the petitioners from their salary. Rule is

discharged. Interim relief granted by this Court stands vacated. Rule in both these petitions discharged.

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